

REMARKS

Claims 1-7, 9-21, 25, and 27-33 were pending in the present application. The Examiner has withdrawn claims 6-28 and 30-33 from consideration as being drawn to non-elected subject matter. By this Amendment, Applicants have amended claim 1 and have canceled claim 3 without prejudice to the right to present the canceled subject matter in a future continuing application. Support for the amendment to claim 1 can be found throughout the originally filed specification and claims, including, for example, in original claim 3. Thus, the present Amendment does not introduce any new matter and its entry is respectfully requested. Upon entry of the present Amendment, claims 1-2, 4-5 and 29 will be pending and under examination.

The March 26, 2007 Final Office Action

Examiner's Rejections of Claims 1-5 and 29

Applicants first note that there appears to be an error in the wording of the Office Action, which states in part that "[r]ejection of claims 1-3 under 35 USC 103(a) as being anticipated by Alvira will not be maintained in light of amendment filed 1/5/07 for reason on record and reason as follows." (Emphasis added). Despite this statement, however, the Examiner actually appears to be maintaining the anticipation rejection (under 35 U.S.C. §102) as well as the obviousness rejection of claims 4 and 5. The Examiner also includes new claim 29 within the obviousness rejection. Therefore, it is Applicants' understanding that claims 1-5 and 29 are being rejected as anticipated by the previously cited Alvira reference (under 35 U.S.C. §102) or as obvious over

the same reference (under 35 U.S.C. §103).

In any event, the Examiner appears to acknowledge that Alvira does not describe any method of obtaining separate enantiomers of equol (i.e., S-equol or R-equol) but notes that claim 1 recites a composition “comprising” R-equol and thus, in the Examiner’s opinion, encompasses compositions containing racemic or other mixtures of equol, which might contain components in addition to the R-enantiomer, such as S-equol. It is Applicants’ understanding that the inclusion of this “comprising” language forms the basis of the Examiner’s rejections of all the presently pending claims.

In response, without conceding the correctness of the Examiner’s position, but to expedite allowance of the application, Applicants have amended claim 1 to recite that the composition “consists essentially of” R-equol. This amendment overcomes the only concern stated in the March 26, 2007 Final Office Action, as the cited art does not teach or suggest any composition that consists essentially of R-equol. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-5 and 29.

In view of the above remarks and amendments to the claims, Applicants believe all of the Examiner's concerns set forth in the March 26, 2007 Office Action have been overcome and the claims are in condition for allowance. The Examiner is invited to telephone the undersigned if it is deemed to expedite allowance of the application.

Respectfully submitted,

August 27, 2007

By

A handwritten signature in black ink, appearing to read 'Patrick T. Skacel', written over a horizontal line.

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